

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

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In the matter of the application of	)	
	)	
<b>POLYNESIAN LIMITED</b>	)	Docket OST-95-791
	)	OST-95-806
for exemptions from 49 U.S.C. 41301 to engage in	)	OST-96-1687
scheduled and charter foreign air transportation	)	OST-98-3631
_____	)	OST-2001-9313
	)	OST-2002-11657

**APPLICATION FOR RENEWAL OF EXEMPTIONS**

Communications with respect to this document should be addressed to:

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Counsel to Polynesian Limited

DATED: January 14, 2003

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**APPLICATION FOR RENEWAL OF EXEMPTIONS**

Polynesian Limited (“Polynesian”) hereby requests renewal of the exemption authority granted to it by the Department of Transportation (the “Department”) in the above-captioned dockets permitting Polynesian to perform scheduled foreign air transportation between:

- (i) Docket OST-95-791:      Apia, Samoa and Pago Pago, American Samoa<sup>1</sup> and beyond to Rarotonga, Cook Islands and Papeete, Tahiti;
- (ii) Docket OST-95-806:      Apia, Samoa, and Honolulu, Hawaii;
- (iii) Docket OST-96-1687:      Apia, Samoa, and Los Angeles, California;
- (iv) Docket OST-98-3631:      Maota, Samoa and Pago Pago, American Samoa; and
- (v) Docket OST-2001-9313:      Honolulu, Hawaii, and Auckland, New Zealand, via Apia, Samoa.

Polynesian also requests renewal of its exemption in Docket OST-2002-11657 permitting it to operate charter flights pursuant to Part 212 of the Department's regulations.<sup>2</sup> Polynesian requests renewal of these exemptions for a one-year period on their existing terms and conditions. Polynesian relies on the provisions of the Administrative Procedure Act and Part 377 of the Department's Procedural Regulations to continue its existing authorizations in these dockets in force pending a final decision on this renewal application.

As indicated below, all of the factors that originally led the Department to grant these exemptions to Polynesian have been confirmed and continue in existence at the present time. Polynesian remains duly licensed and qualified to perform these services. Reciprocity and comity between the United States and Samoa continue to provide a firm foundation for the approval of all of Polynesian's current U.S. operating authority. In light of these circumstances, Polynesian submits that renewal of its exemption authority is clearly mandated under established policies of the Department. In further support of its request for renewal, Polynesian states as follows:

1. Polynesian is a citizen of Samoa. Polynesian was established by the Samoan Government pursuant to a restructuring plan intended to isolate certain pre-existing financial obligations of Polynesian Airlines (Holdings) Limited. Pursuant to the plan, effective November 6, 1995, Polynesian assumed all of the operating authority held previously by Polynesian Airlines (Holdings) Limited, including route rights from Apia to

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<sup>1</sup> Operations between Pago Pago and Apia are conducted at Faleolo (APW) and Fagali'i (FGI) Airports in Apia.

<sup>2</sup> Polynesian also holds in this docket a statement of authorization of indefinite duration permitting it to display the designator code of Royal Tongan Airlines on Polynesian's scheduled flights between Tonga and Honolulu operated via Apia.

Auckland, Wellington, Melbourne, Sydney, Tonga, Rarotonga, Fiji, Pago Pago, Tahiti and Maota.

All but one of the 5 million shares of Polynesian's voting stock are owned by Polynesian Airlines (Investments) Limited ("PAIL"), which is itself owned entirely by the Government of Samoa. The Samoan Financial Secretary on behalf of the Samoan Government owns the remaining share of Polynesian. PAIL also owns all of the assets and equipment that is used by Polynesian in providing air transportation services.

Polynesian and PAIL are incorporated under the laws of Samoa. Each director and principal officer of PAIL is a citizen of Samoa. Two of Polynesian's three directors and three of its four principal officers are citizens of Samoa. Polynesian submits that the foregoing information demonstrates that it is substantially owned and effectively controlled by Samoan citizens.

2. Polynesian currently operates frequent daily flights between (i) Apia, Samoa and Pago Pago, American Samoa; and (ii) Maota, Samoa and Pago Pago, American Samoa utilizing Twin Otter aircraft. Polynesian also provides scheduled service between Apia and Honolulu with service to Tonga and Auckland. These flights are operated weekly with Polynesian's B737-800 aircraft and crews.

3. Polynesian's operations are regulated by the Government of Samoa, which in turn utilizes under contract the safety and technical regulatory services of the New Zealand Ministry of Transport. New Zealand and Samoa are contracting states to the Convention on International Civil Aviation ("Chicago Convention") and observe all

applicable ICAO standards. Samoa has been determined by the FAA to be a Category 1 country.

4. Service between Samoa and the United States is not governed by a bilateral air transport services agreement. Rather, aviation relations between the two countries are under a regime of international comity and reciprocity. The Department has recognized previously in granting Polynesian and Polynesian Airlines (Holdings) Limited exemption authority to provide service between Samoa and various U.S. points that sufficient comity and reciprocity exist between the United States and Samoa to justify service to the United States by Polynesian.<sup>3</sup> The Department has also found that the Government of Samoa has been forthcoming in authorizing U.S. carriers to conduct operations between the United States and Samoa.<sup>4</sup> In fact, Hawaiian Airlines has previously been authorized by the Government of Samoa to conduct operations between Apia and Los Angeles via Pago Pago and Honolulu. Samoa Air is also authorized by the Samoan Government to operate between Apia/Maota and Pago Pago. Samoa Air currently provides service between these cities.<sup>5</sup> United Air Lines also provides service between

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<sup>3</sup>See *Polynesian Airlines, Pendente Lite Exemption*, Order 83-7-7, July 5, 1983; *Notice of Action Taken*, April 28, 1993, Docket 48706; *Notice of Action Taken*, July 9, 1993, Docket 48706; *Notice of Action Taken*, September 9, 1993, Docket 48706; *Notice of Action Taken*, November 8, 1993, Docket 48706; *Notice of Action Taken*, January 4, 1994, Docket 48706; *Notice of Action Taken*, March 2, 1994, Docket 48706; *Notice of Action Taken*, May 2, 1994, Docket 48706; *Notice of Action Taken*, July 20, 1994, Docket 49668; *Notice of Action Taken*, November 6, 1995; *Notice of Action Taken*, January 12, 1998, Dockets OST-95-791, OST-95-806 and OST-96-1687; *Notice of Action Taken*, April 1, 1998, Docket OST-98-3631; *Notice of Action Taken*, February 15, 2000, Dockets OST-95-791, OST-95-806, OST-96-1687 and OST-98-3631; *Notice of Action Taken*, February 4, 2002, Dockets OST-95-791, OST-95-806, OST-96-1687, OST-98-3631, OST-2001-9313; *Notice of Action Taken*, March 7, 2002, Docket OST-2002-11657.

<sup>4</sup>See, e.g., *Application of Hawaiian Airlines, Inc.*, Order 86-11-71, November 28, 1986.

<sup>5</sup>*Official Airline Guide*, Worldwide Edition, December 2002

Apia and Los Angeles pursuant to its codeshare arrangement with Air New Zealand.<sup>6</sup> Under these circumstances, renewal of Polynesian's exemptions is clearly warranted.

5. Polynesian is aware of the restrictions regarding the carriage of cabotage traffic and remains committed to preventing a recurrence of the difficulties experienced by its corporate predecessor in operating service to Honolulu and Los Angeles. Polynesian believes that the preventive measures instituted and emphasized in recent years have served as highly effective safeguards against the carriage of cabotage traffic. Polynesian intends to continue to employ these safeguards.

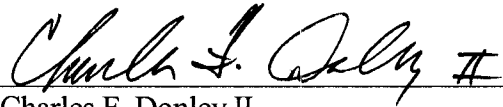
6. Since most of the flights that are the subject of this application are being operated currently, Polynesian submits that its application raises no environmental or energy issues. Similarly, approval of this application will not result in a near-term increase in fuel consumption of ten million gallons or more.

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<sup>6</sup> *Id.*

**WHEREFORE**, Polynesian Limited respectfully requests that the Department of Transportation renew for a one-year period its exemptions to perform scheduled and charter foreign air transportation of persons, property and mail, as more fully described herein.

Respectfully submitted,

A handwritten signature in cursive script, reading "Charles F. Donley II", followed by a horizontal line and a small "H" or "A" mark.

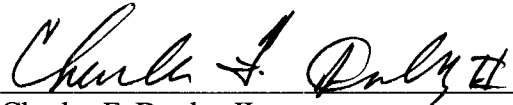
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Counsel to Polynesian Limited

DATED: January 14, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that one copy of the foregoing Application for Renewal has this day been served on each of the following individuals via first class mail, postage prepaid.

  
Charles F. Donley II

DATED: January 14, 2003

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